

# Disciplinary and Other FINRA Actions

## Firm Expelled, Individuals Sanctioned

**Investment Management Corporation (CRD #37196, Bountiful, Utah), Brian Young Horne (CRD #1830136, Registered Principal, Centerville, Utah) and Kevin Dee Kunz (CRD #1274540, Registered Principal, Fruit Heights, Utah)** submitted an Offer of Settlement in which the firm was expelled from FINRA membership, and Horne and Kunz were barred from association with any FINRA member in any capacity. Without admitting or denying the allegations, the firm, Horne and Kunz consented to the described sanctions and to the entry of findings that Kunz, knowingly and willfully, caused the firm to participate as primary placement or sales agent in public offerings, even though the firm was suspended from participation in securities offerings as primary placement or sales agent until it complied with the independent consultant requirement imposed in a previous NASD (nka FINRA) decision.

The findings stated that the firm, acting through Kunz and Horne, processed commissions earned by firm representatives in the private placements through a non-member mortgage company that Horne owned. The findings also stated that Kunz functioned as a principal of the firm even though he was suspended in that capacity from an earlier NASD (nka FINRA decision). The findings also included that Horne, as the firm's president and compliance officer, knew of the independent consultant requirement in the earlier decision or acted with reckless disregard by failing to apprise himself of the sanctions imposed in the decision, but knowingly or recklessly permitted the firm to participate in the offerings without satisfying the independent consultant requirement. FINRA found that Horne knew, or should have known, that Kunz was not permitted to act as a general securities principal but failed to supervise Kunz to prevent him from functioning as a principal while suspended. **(FINRA Case #2005000960301)**

## Firm and Individual Sanctioned

**S.G. Martin Securities LLC (CRD #46908, Jericho, New York) and Emanuel Pantelakis (CRD #3074986, Registered Principal, Flushing, New York)** submitted an Offer of Settlement in which the firm was ordered to pay \$25,294, plus interest, in restitution to investors and to retain an independent consultant to review its policies, systems and procedures (written and otherwise) and training related to sales practices and supervision, and to make recommendations which the firm should implement or suggest alternatives for approval by the consultant. Pantelakis was barred from association with any FINRA member in any capacity. Without admitting or denying the allegations, the firm and Pantelakis consented to the described sanctions and to the entry of findings that, through the actions of Pantelakis and registered representatives, the firm fraudulently misrepresented and omitted material facts to public customers in connection with the sale of securities.

## Reported for March 2008

FINRA® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB).

The findings stated that the firm and Pantelakis failed to establish, maintain and enforce a supervisory system reasonably designed to enforce securities laws, regulations and NASD rules regarding the sales of securities to retail customers, and the firm's written supervisory procedures were not reasonably designed to supervise the registered representatives and principals involved in the sale of securities. The findings also stated that the firm and Pantelakis failed to reasonably supervise the sales activities of registered representatives and failed to establish, maintain or enforce any procedures to supervise Pantelakis. The findings also included that Pantelakis knowingly provided false testimony during a FINRA on-the-record interview. **(FINRA Case #2005000191701)**

### Firm Fined, Individual Sanctioned

**Purshe Kaplan Sterling Investments, Inc. (CRD #35747, Albany, New York) and Peter John Sheehan (CRD #1691364, Registered Principal, Watervliet, New York)** submitted a Letter of Acceptance, Waiver and Consent (AWC) in which they were fined \$50,000, jointly and severally. The firm was censured and Sheehan was suspended from association with any FINRA member in any principal capacity for 30 days. Without admitting or denying the findings, the firm and Sheehan consented to the described sanctions and to the entry of findings that the firm, acting through Sheehan, failed to establish, maintain and/or enforce a supervisory system and written procedures reasonably designed to achieve compliance with securities laws, regulations and NASD rules concerning suitability reviews of customer mutual fund transactions, and failed to enforce written procedures providing for special supervision of registered representatives after customers filed complaints.

The suspension in any principal capacity was in effect from February 4, 2008, through March 4, 2008. **(FINRA Case #2006007370401)**

### Firm and Individual Fined

**Sisung Securities Corporation (CRD #25752, New Orleans, Louisiana) and Lawrence John Sisung Jr. (CRD #1285539, Registered Principal, Gretna, Louisiana)** were fined \$10,000, jointly and severally. The firm was also fined an additional \$10,000. The Securities and Exchange Commission (SEC) imposed the sanctions following appeal of a National Adjudicatory Council (NAC) decision. The sanctions were based on findings that the firm, acting through Sisung, failed to record Sisung's political contributions in its books and records, or to report them to the Municipal Securities Rulemaking Board (MSRB). **(FINRA Case #C0520030036)**

### Firms Fined

**Berry-Shino Securities, Inc. (CRD #38098, Scottsdale, Arizona)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$157,085.97, which includes disgorgement of \$7,085.97 in compensation. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that the firm, acting through an individual, facilitated improper

market timing and impermissible late trading of mutual fund shares by firm customers. The findings stated that the firm, acting through the individual, accepted orders for mutual fund transactions after the close of trading for execution at that day's net asset value (NAV), thereby facilitating late trading. The findings also stated that the firm failed to supervise the individual and to establish, maintain and enforce a supervisory system and written procedures for his mutual fund trading business in a manner reasonably designed to achieve compliance with applicable laws, rules and regulations. **(FINRA Case #E3A20030495-02)**

**Berry-Shino Securities, Inc. (CRD #38098, Scottsdale, Arizona)** submitted an Offer of Settlement in which the firm was censured, fined \$40,000 and ordered to pay \$24,918.62, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it effected mutual fund transactions for public customers and charged transaction fees that were unreasonable and unfairly discriminatory. The findings stated that some of these transactions involved the purchase of mutual funds with sales loads and that the firm's imposition of charges in addition to the sales loads constituted the sale of mutual funds at prices other than the current public offering prices described in the funds' prospectuses. The findings also stated that the firm failed to report, or timely report, items that NASD Rule 3070(a) required to be reported, and failed to timely report customer grievances required to be reported pursuant to NASD Rule 3070(c). The findings also included that the firm failed to file required amendments to Applications for Securities Industry Registration or Transfer (Forms U4) and Uniform Termination Notices for Securities Industry Registration (Forms U5), and submitted amendments to Forms U4 and U5 late. FINRA found that the firm transacted an options business in a branch office without a qualified on-site principal. FINRA also found that the firm voluntarily created a heightened supervision plan for a registered representative but failed to implement the plan. **(FINRA Case #E3A20050037-02)**

**Evolution Financial Technologies, LLC (CRD #104249, Iselin, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$40,000 and required to revise its supervisory procedures regarding manipulative trading activity. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that its supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning manipulative trading activity. The findings stated that the firm failed to establish, maintain and enforce supervisory procedures reasonably designed to monitor for and detect its traders' manipulative trading activity, despite having been apprised by FINRA of specific concerns relating to one of the firm's trader's use of odd-lot trading to achieve unfair, advantageous price gains at the expense of market makers who were utilizing proprietary trading systems that automatically decremented their bids and offers. The findings also stated that the firm's supervisory system did not include written supervisory procedures that provided for the identification of the person(s) responsible for supervision with respect to applicable rules, a statement of the supervisory steps(s) to be taken by the identified person(s), a statement as to how often such person(s) should take such step(s), and a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. The findings also included that the firm submitted

reportable order events (ROEs) to the Order Audit Trail System (OATS) that OATS rejected for context or syntax errors, and the firm failed to repair any of the rejected ROEs. FINRA found that the firm failed to enforce its written supervisory procedures that specified that the “designated OATS principal [would] conduct a daily review of the OATS website” to identify and repair rejected ROEs, would “be responsible for the repair of the rejections and resubmitting the repaired data to OATS,” and would document the supervisory review of the OATS data “by printing ‘ROE Rejections Summary’ on the OATS Web interface the following day, with actions taken at the event of any rejections.” (FINRA Case #20050000069-01)

**FOLIOfn Investments, Inc. (CRD #48015, Vienna, Virginia)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$13,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report execution time to the Automated Confirmation Transaction Service (ACT) in last sale reports of transactions in NASDAQ National Market (NNM) and NASDAQ SmallCap securities. The findings stated that the firm failed to include the bunched order modifier (“B”) for aggregated trade reports submitted to ACT. (FINRA Case #20050006521-01)

**Hill Thompson Magid & Co., Inc. (CRD #2202, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$87,500 and required to revise its written supervisory procedures regarding order handling, short sales and submission of electronic blue sheet data. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that, with respect to trade reporting, it incorrectly designated last sale reports of transactions in designated securities to the Trade Reporting Facility (TRF) as “W,” failed to report the cancellation of one transaction in a designated security previously submitted to the TRF, failed to accept or decline transactions in reportable securities in the OTC Reporting Facility within 20 minutes after execution, failed to report the correct time of execution to the TRF in one last sale report of a transaction in a designated security, and failed to report the correct symbol indicating whether the firm executed transactions in reportable securities in a principal or agency capacity to the TRF and the OTC Reporting Facility. The findings stated that the firm incorrectly reported the second leg of “riskless” principal transactions in designated securities to NASDAQ and the OTC Reporting Facility because it incorrectly designated the capacity of such transactions as “agent,” and failed to report to the OTC Reporting Facility the cancellation of transactions in OTC equity securities previously submitted to the OTC Reporting Facility. The findings also stated that the firm failed to submit, for the offsetting, “riskless” portion of “riskless” principal transactions in designated securities, either a clearing-only report with a capacity indicator of “riskless principal” or a non-tape, non-clearing report with a capacity indicator of “riskless principal” to the OTC Reporting Facility. The findings also included that the firm incorrectly designated a last sale report of a transaction in an OTC equity security as “PRP” to the OTC Reporting Facility. With respect to short sales, the firm consented to findings that it executed short sale orders and failed to properly mark the order tickets as short, and effected short sales of securities registered on a national securities exchange at or below the price at which the last sale of each security, regular way, was reported pursuant to an effective transaction reporting plan. FINRA found that the firm had a fail-to-deliver position in

threshold securities at a registered clearing agency for 13 consecutive settlement days and failed to immediately close out the fail-to-deliver positions by purchasing securities of like kind and quantity, and the firm had a fail-to-deliver position in threshold securities at a registered clearing agency for 13 consecutive settlement days, and until the firm closed out the fail-to-deliver positions by purchasing securities of like kind and quantity, failed to borrow the security or enter into a bona fide arrangement to borrow the security prior to executing proprietary short sales in the securities. FINRA found that the firm failed to report the correct symbol indicating whether transactions were buy, sell, sell short, sell short exempt or cross to the NASDAQ Market Center (NMC), executed short sale transactions and failed to report each of the transactions to the NMC with a short sale modifier. In addition, FINRA found that the firm failed to report accurate trading information through the submission of electronic blue sheets in response to FINRA requests. Finally, FINRA determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning order handling, short sales and submission of electronic blue sheet data, and the firm failed to enforce its written supervisory procedures concerning best execution, SEC Rule 605 (disclosure of order execution information), NASD Rule 6130 (third party reporting), and NASD Rule 5262 (Intermarket Trading System/Computer Assisted Execution System (ITS/CAES) Market Maker rules). **(FINRA Case #20050024894-01)**

**M&T Securities, Inc. (CRD #17358, Buffalo, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it purchased municipal securities for its own account from customers and/or sold municipal securities for its own account to customers at an aggregate price (including any markdown or markup) that was not fair and reasonable taking into consideration all relevant factors, including the best judgment of the broker, dealer or municipal securities dealer as to the fair market value of the securities at the time of the transactions, and of any securities exchanged or traded in connection with the transactions, the expense involved in effecting the transactions, the fact that the broker, dealer or municipal securities dealer is entitled to a profit, and the total dollar amount of the transactions. **(FINRA Case #20060062803-01)**

**Merrill Lynch Professional Clearing Corp. (CRD #16139, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$35,000 and required to revise its written supervisory procedures regarding the three quote rule, and trade and OATS reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted New Order Reports and other reports to OATS that contained inaccurate, incomplete or improperly formatted data, and reported Route or Combined Order/Route Reports to OATS that the OATS system was unable to link to the related order routed to SuperMontage due to inaccurate, incomplete or improperly formatted data. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning the three quote rule, and trade and OATS reporting. **(FINRA Case #20060046100-01)**

**Neuberger Berman, LLC (CRD #2908, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$20,000 and required to revise its written supervisory procedures regarding trade reporting to the Trade Reporting and Compliance Engine (TRACE). Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in TRACE-eligible securities executed on a business day during TRACE system hours to TRACE within 30 minutes of the time of execution. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning trade reporting to TRACE. The findings also stated that the firm failed to report the lower of yield to call or yield to maturity for transactions in TRACE-eligible securities to TRACE. The findings also included that the firm failed to report information regarding purchase and sale transactions effected in municipal securities to the Real-time Transaction Reporting System (RTRS) in the manner prescribed by MSRB Rule G-14 RTRS Procedures and the RTRS Users Manual because it failed to report information about transactions to an RTRS Portal within 15 minutes of time of trade. **(FINRA Case #20050004554-01)**

**Peacock, Hislop, Staley & Given, Inc. (CRD #21477, Phoenix, Arizona)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$30,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it knowingly permitted an individual to continue to associate with the firm while statutorily disqualified, and permitted the individual to function as a municipal securities representative although he was not registered with FINRA or the MSRB in any capacity. **(FINRA Case #2007007461501)**

**RBC Capital Markets Corporation (CRD #6579, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$17,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in TRACE-eligible securities it was required to report to TRACE. **(FINRA Case #20050007227-01)**

**Reliance Securities, LLC (CRD #47079, Atlanta, Georgia)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to establish, maintain and enforce adequate written supervisory procedures related to fee-based brokerage accounts, and overcharged accounts for fee-based services even though the SEC had previously found the firm to have overcharged customer accounts. **(FINRA Case #2006003957801)**

**Sigma Financial Corporation (CRD #14303, Ann Arbor, Michigan)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$10,000 and required to revise its written supervisory procedures regarding TRACE reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in TRACE-eligible securities executed on a business day during TRACE system hours to TRACE within 15 minutes of execution. The findings stated that the firm failed to report the



correct trade execution time for transactions in TRACE-eligible securities to TRACE. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning TRACE reporting. **(FINRA Case #20060061606-01)**

**Strand, Atkinson, Williams & York, Inc. (CRD #1254, Portland, Oregon)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it allowed registered representatives to effect transactions in its average price account in order to provide multiple customers of a single representative an average price execution. The findings stated that the firm failed to establish, maintain and enforce a supervisory system and written supervisory procedures regarding the use of the average price account. The findings also stated that the firm prepared brokerage order memoranda for customer transactions effected via the firm's average price account, but the memoranda lacked one or more required elements such as accurately denoting the time the order was received, the time the order was executed, the terms and conditions of the order, and whether the order was entered pursuant to an exercise of discretionary authority. The findings also included that the firm allowed registered representatives to exercise discretionary authority without prior written customer authorization when executing customer trades via the firm's average price account. **(FINRA Case #2006007078101)**

**TD Ameritrade Clearing, Inc. (CRD #5633, Bellevue, Nebraska)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it submitted Route or Combined Order/Route Reports to OATS that the OATS system was unable to link to the corresponding new order the destination member firm submitted due to inaccurate, incomplete or improperly formatted data. **(FINRA Case #20060048452-01)**

**UBS Securities LLC (CRD #7654, Stamford, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to immediately display customer limit orders in NASDAQ securities in its public quotation, when each order was at a price that would have improved the firm's bid or offer in each security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each security, and the size of the order represented more than a *de minimis* change in relation to the size associated with the firm's bid or offer in each security. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning limit order display. **(FINRA Case #20050001318-01)**

## Individuals Barred or Suspended

**Gregory Steven Azulphart (CRD #5118678, Associated Person, Portland, Oregon)** was fined \$5,000 and suspended from association with any FINRA member in any capacity for six months. The sanctions were based on findings that Azulphart failed to disclose material information on his Form U4.

The suspension in any capacity is in effect from January 7, 2008, through July 6, 2008. (FINRA Case #2006005746701)

**Andrew Cy Banks (CRD #1186771, Registered Representative, Ft. Lauderdale, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 10 business days. Without admitting or denying the findings, Banks consented to the described sanctions and to the entry of findings that he mismarked order tickets corresponding to discretionary transactions executed in a public customer's account as "unsolicited," when in fact the transactions were solicited. The findings stated that Banks exercised discretionary authority in the customer's account without prior written authorization, and failed to make and preserve accurate books and records.

The suspension in any capacity was in effect from February 4, 2008, through February 15, 2008. (FINRA Case #2007009447801)

**Timothy Patrick Barry (CRD #2267209, Registered Representative, Appleton, Wisconsin)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 10 business days. Without admitting or denying the findings, Barry consented to the described sanctions and to the entry of findings that he attempted to compensate public customers for losses incurred related to a delay in processing a stock sale. The findings stated that Barry wrote personal checks totaling \$7,000 to the customers without informing his member firm that he had attempted to compensate the customers, and without obtaining authority from his firm to settle the loss in this manner.

The suspension in any capacity was in effect from February 19, 2008, through March 3, 2008. (FINRA Case #20060063677-01)

**Richard Nestor Beleutz (CRD # 2403229, Registered Principal, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$15,000 and suspended from association with any FINRA member in any capacity for 45 days. Without admitting or denying the findings, Beleutz consented to the described sanctions and to the entry of findings that he facilitated hedge fund clients' market timing transactions in mutual funds by enabling the clients to execute numerous mutual fund trades in violation of trading restrictions intended to prevent market timing in mutual funds.

The suspension in any capacity is in effect from February 25, 2008, through April 9, 2008. (FINRA Case #E8A20040321-01)



**John Thomas Blanchette (CRD #4421027, Registered Principal, Henderson, Kentucky) and Danny Ray Woosley (CRD #4379663, Registered Representative, Evansville, Indiana)** submitted Letters of Acceptance, Waiver and Consent in which Blanchette and Woosley were fined \$5,000 each. Blanchette was suspended from association with any FINRA member in any capacity for 20 business days, and Woosley was suspended from association with any FINRA member in any capacity for 10 business days. The fine must be paid either immediately upon Blanchette's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Blanchette and Woosley consented to the described sanctions and to the entry of findings that they engaged in private securities transactions without prior written notice to, and approval from, their member firm.

Blanchette's suspension in any capacity was in effect from February 4, 2008, through March 3, 2008. Woosley's suspension in any capacity was in effect from February 19, 2008, through March 3, 2008. **(FINRA Cases #20060054450-03/20060054450-04)**

**James Wade Browne (CRD #1189996, Registered Representative, Dallas, Texas) and Kevin P. Calandro (CRD #1459109, Registered Representative, Dallas, Texas).** Browne was fined \$25,000 and suspended from association with any FINRA member in any capacity for six months, and Calandro was fined \$5,000 and suspended from association with any FINRA member in any capacity for three months. The NAC imposed the sanctions following appeal of an Office of Hearing Officers (OHO) decision. The sanctions were based on findings that Browne and Calandro participated in private securities transactions without prior written notice to, and written approval from, their member firm.

This decision has been appealed to the SEC, and the sanctions are not in effect pending consideration of the appeal. **(FINRA Case #C0520050015)**

**Timothy Joseph Clain (CRD #1172504, Registered Representative, Proctor, Vermont)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for six months. The fine must be paid either immediately upon Clain's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Clain consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

The suspension in any capacity is in effect from January 22, 2008, through July 21, 2008. **(FINRA Case #2007008769101)**

**Jason Adam Craig (CRD #4016543, Associated Person, Washington Township, Michigan)** was barred from association with any FINRA member in any capacity. The NAC imposed the sanction following appeal of an OHO decision. The sanction was based on findings that Craig willfully failed to disclose material information on his Form U4.

This decision has been appealed to the SEC; the bar is in effect pending consideration of the appeal. **(FINRA Case #E8A2004095901)**

**Gloria Michelle Crayton (CRD #2614765, Registered Representative, Hercules, California)** submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Crayton consented to the described sanction and to the entry of findings that she submitted payroll reimbursement claims totaling \$11,440 to an affiliate of her member firm for an individual who did not work for her, and Crayton did not actually incur the payroll expenses claimed. **(FINRA Case #20070082798-01)**

**Jill Erin Dell (CRD #1518074, Registered Representative, Woodstock, Georgia)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$10,000 and suspended from association with any FINRA member in any capacity for 30 business days. The fine must be paid either immediately upon Dell's reassociation with a FINRA member firm following her suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Dell consented to the described sanctions and to the entry of findings that she deposited \$30,500 into a public customer's bank account through monthly payments of \$500 as purported income from a variable universal life policy to avoid a complaint from her member firm's customers. The findings stated that Dell's payments to the customer precluded a timely analysis of whether she had made misrepresentations and omitted material facts in connection with the sale of the policy to the customer.

The suspension in any capacity is in effect from February 4, 2008, through March 17, 2008. **(FINRA Case #2006006604001)**

**Hossien Shane Dez Dezfoolyzadeh (CRD #2466567, Registered Representative, Laguna Niguel, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for six months. The fine must be paid either immediately upon Dezfoolyzadeh's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Dezfoolyzadeh consented to the described sanctions and to the entry of findings that without the customers' knowledge or consent, he signed their names to firm forms in order to transfer their customer accounts from his prior firm to his then current firm.

The suspension in any capacity is in effect from February 4, 2008, through August 3, 2008. **(FINRA Case #2007008657501)**

**Scott Michael Epstein (CRD #4268699, Registered Representative, Marlboro, New Jersey)** was barred from association with any FINRA member in any capacity. The NAC imposed the sanction following appeal of an OHO decision. The sanction was based on findings that Epstein recommended and effected unsuitable mutual fund switch transactions without having reasonable grounds for believing that the transactions were suitable for public customers in view of the nature of the recommended transactions, and in light of the customers' financial situations, investment objectives, circumstances and needs.

This decision has been appealed to the SEC and the sanction is in effect pending consideration of the appeal. **(FINRA Case #C9B20040098)**

**Charles Collingwood Fawcett IV (CRD #1576169, Registered Representative, Venetia, Pennsylvania)** was barred from association with any FINRA member in any capacity. The SEC affirmed the NAC decision that imposed the sanction following appeal of an OHO decision. The sanction was based on findings that Fawcett failed to respond to FINRA requests for information and to provide on-the-record testimony. **(FINRA Case #C9A20040024)**

**Sheldon Anthony Goldberg (CRD #2110148, Registered Representative, Merrick, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for nine months. The fine must be paid either immediately upon Goldberg's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Goldberg consented to the described sanctions and to the entry of findings that he failed to timely amend his Form U4 to disclose material information.

The suspension in any capacity is in effect from February 19, 2008, through November 18, 2008. **(FINRA Case #2007007930401)**

**Kyle Timothy Holland (CRD #2308543, Registered Principal, Austin, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$20,000 and suspended from association with any FINRA member in any capacity for 30 days. Holland was also suspended from association with any FINRA member as a Financial and Operations Principal (FINOP) for three months, and must requalify by examination before acting in a FINOP capacity. Without admitting or denying the findings, Holland consented to the described sanctions and to the entry of findings that a member firm, acting through Holland, engaged in a securities business while failing to maintain adequate net capital, and filed an inaccurate Financial and Operational Combined Uniform Single (FOCUS) report with FINRA. The findings stated that the firm, acting through Holland, failed to establish and maintain a reasonable supervisory system, including written procedures, related to the receipt and handling of customer stock certificates when public customers inadvertently forwarded their certificates to the firm instead of the clearing firm, and related to how the firm would instruct customers regarding the correct way to deposit stock certificates into their accounts. The findings also stated that Holland engaged in activities requiring principal registration while suspended in that capacity.

The suspension in any capacity is in effect from March 3, 2008, through April 1, 2008. The suspension in a FINOP capacity is in effect from March 3, 2008, through June 2, 2008. **(FINRA Case #20060054866-01)**

**Gregory Arthur Horton (CRD #1362727, Registered Principal, Monmouth Beach, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Horton consented to the described sanction and to the entry of findings that, while exercising control over his customers' accounts at his member firm and while acting with the requisite scienter, he excessively traded the accounts, which resulted in annualized cost-to-equity ratios ranging from 21 percent to 244 percent.

The findings stated that as a result of Horton's churning of the accounts, many of the customers incurred substantial losses. (FINRA Case #2006004865001)

**Jonathan Christopher Ilchert (CRD #2484719, Registered Representative, Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Ilchert consented to the described sanction and to the entry of findings that he misrepresented material facts and engaged in manipulative, deceptive or other fraudulent devices in connection with recommendations that public customers invest in private securities offerings. The findings stated that Ilchert failed to respond to FINRA requests for an on-the-record interview. (FINRA Case #2006004996101)

**James Robert Kelly (CRD #1323155, Registered Principal, Tampa, Florida)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for eight months. Without admitting or denying the allegations, Kelly consented to the described sanctions and to the entry of findings that he failed to provide complete and timely responses to FINRA requests for information. The findings stated that Kelly willfully failed to amend his Form U4 with material information. The findings also stated that Kelly filed an amendment to his Form U4 that included an optional comment regarding an AWC which constituted a public statement denying directly or indirectly an allegation in the AWC, and created the impression that the AWC was without factual basis, which was in violation of the terms of the AWC.

Kelly's suspension in any capacity is in effect from February 4, 2008, through October 3, 2008. (FINRA Case #2006005457801)

**Vinh Gia Liu (CRD #5380655, Associated Person, Oakland, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for three months. The fine must be paid either immediately upon Liu's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Liu consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Form U4.

The suspension in any capacity is in effect from February 4, 2008, through May 3, 2008. (FINRA Case #20070098640-01)

**Joseph Patrick Lovaglio (CRD #3234996, Registered Representative, Brooklyn, New York)** submitted an Offer of Settlement in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the allegations, Lovaglio consented to the described sanction and to the entry of findings that he failed to respond to FINRA requests for information and documents. (FINRA Case #20070086505-01)

**Jose Martin Lugo (CRD #5306323, Associated Person, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for six months. The fine must

be paid either immediately upon Lugo's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Lugo consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Form U4.

The suspension in any capacity is in effect from February 19, 2008, through August 18, 2008. **(FINRA Case #2007009364201)**

**Kenneth Robert Mahoney (CRD #1911756, Registered Representative, Briarcliff Manor, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$49,123, which includes the disgorgement of financial benefits received totaling \$44,123, and suspended from association with any FINRA member in any capacity for six months. Without admitting or denying the findings, Mahoney consented to the described sanctions and to the entry of findings that he participated in private securities transactions with his member firm customers without prior written notice to, or prior written approval from, his member firm.

The suspension in any capacity is in effect from February 4, 2008, through August 3, 2008. **(FINRA Case #2006004140201)**

**Raymond Edward Matthews (CRD #5086781, Registered Representative, Mansfield, Texas)** submitted an Offer of Settlement in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the allegations, Matthews consented to the described sanction and to the entry of findings that he forged the public customers' signatures on life insurance applications and failed to respond to FINRA requests for testimony. **(FINRA Case #2006006553301)**

**Shawna Lee Mendoza (CRD #4870515, Associated Person, Moreno Valley, California)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any FINRA member in any capacity for three months. The fine must be paid either immediately upon Mendoza's reassociation with a FINRA member firm following her suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Mendoza consented to the described sanctions and to the entry of findings that she was instructed by registered representatives at her member firm to complete missing items and obtain new customer signatures on Point of Sale-Variable Life (POS) forms that the customers had previously signed in connection with their applications for variable universal life insurance policies. The findings stated that because Mendoza was unable to get timely responses from the customers and receive newly signed POS forms, she obtained information from other customer documents and, without the customers' knowledge and consent, photocopied their signatures to the POS forms and inserted more recent dates to make it appear that the customers had signed new POS forms. The findings also stated that Mendoza altered the dates on the POS forms next to the registered representatives' signatures without their knowledge and consent.

The suspension in any capacity is in effect from February 4, 2008, through May 3, 2008. **(FINRA Case #2006006943001)**

**Frank Giorgio Muia (CRD # 2726899, Registered Representative, Huntington, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 30 days. Without admitting or denying the findings, Muia consented to the described sanctions and to the entry of findings that he borrowed \$2,700 from a public customer of his member firm without notifying or receiving written approval from his firm regarding the loan and in contravention of the firm's written supervisory procedures prohibiting borrowing monies or securities from a firm customer.

The suspension in any capacity is in effect from February 19, 2008, through March 19, 2008. **(FINRA Case #2007009609501)**

**Bhupinder Singh Pannu (CRD #4696077, Registered Representative, Richmond, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$2,500 and suspended from association with any FINRA member in any capacity for three months. In light of Pannu's financial status, a \$2,500 fine was imposed. Twenty percent of the fine must be paid either immediately upon Pannu's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Pannu consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Form U4.

The suspension in any capacity is in effect from February 4, 2008, through May 3, 2008. **(FINRA Case #20060067866-01)**

**Ronald Pellegrino (CRD #832857, Registered Principal, Bellingham, Washington)** was barred from association with any FINRA member in any principal capacity. The NAC imposed the sanction following appeal of an OHO decision. The sanction was based on findings that Pellegrino inadequately supervised registered representatives of his member firm when he failed to respond sufficiently to red flags indicating possible misconduct by registered representatives in the sale of unsuitable proprietary investment products, and failed to establish and maintain an adequate supervisory system.

This decision has been appealed to the SEC, and the sanction is in effect pending review. **(FINRA Case #C3B20050012)**

**Ronald Leslie Salyer (CRD #409643, Registered Representative, Arlington, Virginia)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for 60 days. The fine must be paid either immediately upon Salyer's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Salyer consented to the described sanctions and to the entry of findings that he recommended and effected purchases of speculative securities without having reasonable grounds for believing the recommendations were suitable for the customers.

The suspension in any capacity is in effect from February 4, 2008, through April 3, 2008. **(FINRA Case #2006005673001)**



**Alex Benton Seleznov (CRD #3187157, Registered Principal, Tolleson, Arizona)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that Seleznov failed to respond to FINRA requests to appear for an on-the-record interview. The findings stated that Seleznov failed to ensure that his member firm operated with sufficient net capital. The findings also stated that a member firm, acting through Seleznov, filed materially inaccurate FOCUS reports. **(FINRA Case #2005003283101)**

**Dennis Wayne Sharp (CRD #2204032, Registered Principal, Puyallup, Washington)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Sharp consented to the described sanction and to the entry of findings that he engaged in private securities transactions without prior notice to, and approval from, his member firm. The findings stated that Sharp represented to public customers that payments on promissory notes were guaranteed when he should have known that they were not guaranteed, and failed to inquire sufficiently into their status before making representations. The findings also stated that Sharp made recommendations to public customers without reasonable grounds for believing they were suitable for the customers on the basis of facts disclosed by them as to their other security holdings, financial situation and needs. **(FINRA Case #2006006587101)**

**Michael J. Skrabis (CRD #4128727, Registered Principal, Orland Park, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for six months, with credit to be given for two months. Without admitting or denying the findings, Skrabis consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Form U4.

The suspension in any capacity is in effect from February 4, 2008, through June 3, 2008. **(FINRA Case #2006007020501)**

**Wesley Alvin Snyder (CRD #1628640, Registered Principal, Oley, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Snyder consented to the described sanction and to the entry of findings that he failed to respond to a FINRA request for information. **(FINRA Case #200701122201)**

**Joseph P. Tiedeken Jr. (CRD #4310006, Registered Representative, Holland, Ohio)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that Tiedeken failed to completely respond to FINRA requests for information and documents. The findings stated that Tiedeken borrowed \$11,000 from a public customer contrary to his member firm's written policy that prohibited its registered representatives from borrowing money or securities from customers. **(FINRA Case #2005003119501)**

**Roger Chi Fung Tsui (CRD #5164562, Registered Representative, Kowloon, Hong Kong)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for two years. The fine must be paid either immediately upon Tsui's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or

request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Tsui consented to the described sanctions and to the entry of findings that he possessed unauthorized materials during a General Securities Representative Qualification (Series 7) examination.

The suspension in any capacity is in effect from January 22, 2008, through January 21, 2010. **(FINRA Case #20060069560-01)**

**Christopher A. Wiston (CRD #4891840, Registered Representative, Waterford Works, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for six months. The fine must be paid either immediately upon Wiston's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Wiston consented to the described sanctions and to the entry of findings that he signed public customers' names on life insurance policy documents without their authorization or consent.

The suspension in any capacity is in effect from February 4, 2008, through August 3, 2008. **(FINRA Case #2006006759201)**

**Brian Anthony Zirnheld (CRD #1249810, Registered Representative, Wheatfield, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for one year. In light of Zirnheld's financial status, a fine of \$10,000 has been imposed. The fine must be paid either immediately upon Zirnheld's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Zirnheld consented to the described sanctions and to the entry of findings that he recommended the purchase of a variable annuity to public customers without having reasonable grounds for believing that the recommendation was suitable based upon the customers' investment objectives, financial situation and needs. The findings stated that Zirnheld knowingly submitted a false written statement to his member firm claiming that at the time he made the unsuitable recommendation, he was not aware that both customers suffered from dementia.

The suspension in any capacity is in effect from February 19, 2008, through February 18, 2009. **(FINRA Case #2006005319701)**

## Individual Fined

**Shelly Sean Singhal (CRD #2234471, Registered Principal, Newport Beach, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was censured and fined \$25,000. Without admitting or denying the findings, Singhal consented to the described sanctions and to the entry of findings that a member firm, acting through Singhal, established and had exclusive control over a trading account at another FINRA member to receive, hold and engage in securities transactions for its customers. The findings stated that proceeds of stock sales were processed through the firm's operating accounts before being delivered to the customers. The findings also stated that because the firm held customer funds, it was required to establish a Special Reserve Bank Account for the Exclusive Benefit of Customers to perform monthly reserve computations and make deposits into the Account in accordance with the formula set forth in SEC Rule 15c3-3a, but it failed to do so. **(FINRA Case #2006004663201)**

## Decision Issued

The Office of Hearing Officers (OHO) issued the following decision, which has been appealed to or called for review by the NAC as of January 31, 2008. The NAC may increase, decrease, modify or reverse the findings and sanctions imposed the decisions. Initial decisions whose time for appeal has not yet expired will be reported in the next Regulatory Notices.

**Scott Lee Mathis (CRD #1362203 Registered Principal, New York, New York)** was fined \$12,500 and suspended from association with any FINRA member in any capacity for three months and 10 business days. The suspensions shall run concurrently. The fines are payable upon re-entry into the industry. The sanctions were based on findings that Mathis willfully failed to disclose material information on his Form U4.

This decision has been appealed to the NAC and the sanctions are not in effect pending consideration of the appeal. **(FINRA Case #C1020040052)**

## Complaints Filed

FINRA issued the following complaints. Issuance of a disciplinary complaint represents FINRA's initiation of a formal proceeding in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding these allegations in the complaint.

**Delbert Foster Blount III (CRD #2991522, Registered Representative, Dandridge, Tennessee)** was named as a respondent in a FINRA complaint alleging that he received \$317,825.61 from public customers for investment purposes but deposited their funds into his personal bank account without their knowledge or consent, thereby converting \$317,825.61 to his own use. The complaint alleges that in effecting his scheme, Blount made material misrepresentations in that he provided the customers with false account statements showing fictitious assets and false account values. The complaint also alleges that Blount, acting with scienter, directly or indirectly, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, or of the mails, employed devices, schemes or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices or courses of business that operated, or would operate, as a fraud or deceit upon purchasers or prospective purchasers. The complaint further alleges that Blount failed to respond to FINRA requests for information. **(FINRA Case #2006007525401)**

**Richard Grant Cody (CRD #2794558, Registered Representative, Boston, Massachusetts)** was named as a respondent in a FINRA complaint alleging that he engaged in unsuitable and excessive trading in public customers' accounts, resulting in significant commission income for him and loss of income for his customers. The complaint alleges that Cody effected transactions without having reasonable grounds for believing the transactions were suitable for the customers in view of the size and frequency of the transactions, the transaction costs incurred, the nature of the accounts and the customers' financial situation, investment objectives and needs. The complaint also alleges that Cody sent misleading account statements to the customers that his member firm had not approved. The complaint further alleges that Cody willfully failed to disclose material information on his Form U4. **(FINRA Case #2005003188901)**

**Louis Michael Nolfo (CRD #2439250, Registered Principal, Boca Raton, Florida)** was named as a respondent in a FINRA complaint alleging that in connection with the purchase or sale of securities, he exercised control over public customers' accounts, churned the accounts and effected numerous and excessive securities transactions in the accounts. The complaint alleges that Nolfo, directly or indirectly, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, or of the mails, employed devices, schemes or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices or courses of business that operated, or would

operate, as a fraud or deceit upon any person; or effected transactions in, or induced the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance. The complaint also alleges that Nolfo used unsuitable margin levels in a customer's account in a manner that was reckless and inconsistent with the customer's objectives, financial situation and needs. The complaint further alleges that Nolfo failed to adequately and properly supervise the trading activity of a registered representative who engaged in excessive and unsuitable transactions.

**(FINRA Case #2005001698202)**

**Stephen Matthew Sirianni (CRD #715867, Registered Representative, Wausau, Wisconsin)** was named as a respondent in a FINRA complaint alleging that he participated in a private securities transaction for compensation, and failed and neglected to give written notice to, and receive written approval from, his member firm prior to engaging in such activities. The complaint alleges that Sirianni, while using the means and instrumentalities of interstate commerce to offer securities for sale, made material misrepresentations in the form of price predictions to induce transactions, which did occur. The complaint also alleges that Sirianni engaged in outside business activities, for compensation, and failed and neglected to give prompt written notice to his member firm. **(FINRA Case #E8A2004095401)**

**Erica Latishia Tolbert (CRD #5109478, Associated Person, Atlanta, Georgia)** was named as a respondent in a FINRA complaint alleging that she caused the issuance of a checkbook for public customers' account with her personal address as the delivery address, and either negotiated or caused checks to be negotiated by a third party, and converted proceeds of \$12,200 without the customers' authorization, knowledge or consent. The complaint alleges that Tolbert failed to respond to FINRA requests for information. **(FINRA Case #2007007580501)**

**James Byongmin Yim (CRD #3137645, Registered Representative, Sparks, Nevada)** was named as a respondent in a FINRA complaint alleging that he submitted requests to his member firm purportedly signed by public customers requesting the transfer of funds totaling \$1,328,000 from their accounts to other accounts, without the customers' knowledge, authorization or consent. The complaint alleges that Yim failed to respond to FINRA requests for information and to appear for an on-the-record interview. **(FINRA Case #20060063365-01)**

**Firm Expelled for Failure to Pay Fines and/or Costs**

**Sterling Financial Investment Group, Inc.**  
Boca Raton, Florida  
(January 23, 2008)

**Firms Suspended for Failure to Supply Financial Information**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

**Benchmark Investments, Inc.**  
Arkadelphia, Arkansas  
(January 7, 2008 – January 15, 2008)

**INCAP Securities, Inc.**  
Baltimore, Maryland  
(January 9, 2008 – February 15, 2008)

**Firm Suspended for Failing to Pay Arbitration Awards**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

**Urchin Capital Partners LLC**  
San Francisco, California  
(January 14, 2008)

**Individual Suspended Pursuant to NASD Rule 9553 for Failure to Pay Arbitration Fees**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

**Richard Francis Kresge**  
Bayshore, New York  
(January 8, 2008)

**Individuals Barred Pursuant to NASD Rule 9552(h)**

(If the bar has been vacated or revoked, the date follows the bar date.)

**Joshua Kevin Englert**  
Westminster, Colorado  
(January 31, 2008)

**Mark Leon Henry**  
Joplin, Missouri  
(January 8, 2008)

**Thomas Brian Jordan**  
Helena, Alabama  
(January 25, 2008)

**Shon Charles Prejean**  
Houston, Texas  
(November 21, 2007 – January 16, 2008)

**Bridget Elaine Steele**  
Stafford, Texas  
(January 8, 2008)

**Albert Alexander Whitehead Jr.**  
Crestview, Kentucky  
(January 2, 2008)

**Jason Scott Woessner**  
Boca Raton, Florida  
(January 14, 2008)

**Individuals Suspended Pursuant to NASD Rule 9552(d)**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

**Brent Allen Burke**  
Carson City, Nevada  
(January 22, 2008)

**Rendell Eshey Draper**  
St. Charles, Missouri  
(January 14, 2008)



**Loris Kay Hager**

Fargo, North Dakota  
(January 10, 2008)

**Thomas Denton Lillard**

Germantown, Tennessee  
(January 28, 2008)

**Frank Rocco Rossi**

Winthrop, Massachusetts  
(January 22, 2008)

**Individuals Suspended Pursuant to NASD Rule Series 9554 for Failure to Comply with an Arbitration Award or Settlement Agreement**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

**Bayan Alrachid**

Santa Ana, California  
(January 14, 2008)

**James E. Bell**

Houston, Texas  
(January 31, 2008)

**Daniel Scott Bookout**

Greenwood, Indiana  
(January 14, 2008)

**Daniel Scott Bookout**

Greenwood, Indiana  
(January 31, 2008)

**Andrew Taylor Bryan**

St. Louis, Missouri  
(January 31, 2008)

**William Joseph Dacey**

Melrose, Massachusetts  
(January 31, 2008)

**Timothy James Daly**

Weston, Connecticut  
(January 23, 2008)

**Danny Bernard Daniels**

Ft. Worth, Texas  
(January 14, 2008)

**Peter Raad Fader**

San Francisco, California  
(January 14, 2008)

**Carlisle William Kelson Jr.**

Elkhart, Indiana  
(January 14, 2008)

**Michael Hardwicke Lewis Sr.**

Baton Rouge, Louisiana  
(January 2, 2008)

**Carl Dominic Martellaro**

Chico, California  
(January 31, 2008)

**William Todd Mauney**

Highland Village, Texas  
(January 14, 2008)

**Adam Matthew Novick**

Hollywood, Florida  
(January 23, 2008)

**Bruce James Paura**

Winter Park, Florida  
(January 2, 2008)

**Donald L. Popkes**

West Hollywood, California  
(January 31, 2008)

**Donald Warner Reinhard**

Alpharetta, Georgia  
(January 2, 2008 – January 16, 2008)

**William Joseph Spina**

Greenbush, Massachusetts  
(January 2, 2008)

**Frederick Stratton Sundin**

Cranston, Rhode Island  
(January 31, 2008)

**Bret Allen Swisher**

Mansfield, Ohio  
(January 23, 2008)

### **FINRA Fines 19 Firms a Total of \$2.8 Million for Inaccurate Advertised Trade Volume Information**

The Financial Industry Regulatory Authority (FINRA) has fined 19 broker-dealers a total of \$2.8 million for substantially overstating their advertised trade volume to three private service providers.

FINRA compared the firms' advertised trade volume in selected securities with the firms' executed trade volume for the same securities in August 2006 and found substantial overstatements for each firm in one or more of the securities reviewed. FINRA also found that, prior to September 2006, all of the firms lacked an adequate supervisory system and procedures for communicating trade volume to such services.

The firms' overstated trade volumes were made available to market participants by the service providers. The service providers also used the firms' inaccurate advertised trade volumes to compile rankings and reports, including reports that rank the most active broker-dealers by security.

"Consistent with the obligation to report accurate trades to FINRA, when firms provide their trade volume to third party vendors for dissemination to market participants, it is critically important that firms take appropriate steps to ensure that their advertised trade volume is accurate" said Thomas Gira, FINRA Executive Vice President and Head of the Department of Market Regulation. In September 2006, FINRA published Notice to Members 06-50 to remind broker-dealers of that obligation.

In the actions announced today, eight firms were fined \$200,000 each (Broadpoint Capital, Inc., CIBC World Markets Corp., Lehman Brothers, Inc., Merrill Lynch, Pierce, Fenner & Smith, Inc., Needham & Company, LLC, Robert W. Baird & Co., Inc., Thomas Weisel Partners, LLC and UBS Securities, LLC). Six firms were fined \$150,000 each (Bear, Stearns & Co., Inc., BMO Capital Markets Corp., Cowen and Company, LLC, Deutsche Bank Securities, Inc., Leerink Swann & Company, Inc. and RBC Capital Markets Corp.). Four firms were fined \$50,000 each (Friedman, Billings, Ramsey & Co., Inc., Jefferies & Company, Inc., JMP Securities, LLC and Pacific Crest Securities, Inc.).

The fine for one firm, Piper Jaffray & Co., was reduced to \$100,000 because the firm conducted its own extensive internal investigation and then voluntarily provided the results to FINRA.

In concluding these settlements, the 19 firms neither admitted nor denied the charges, but consented to the entry of FINRA's findings.

## **SMH Capital Fined \$450,000 for Procedural Failures Regarding Soft Dollar Payments, Distributing Improper Hedge Fund Sales Materials**

### **Two SMH Brokers Fined \$200,000 for Improper Commission Sharing, One Broker Sanctioned for Registration Violation**

The Financial Industry Regulatory Authority (FINRA) has fined SMH Capital Inc. (fka Sanders Morris Harris, Inc.) of Houston, TX, \$450,000 for failing to adopt adequate supervisory procedures and systems designed to address its prime brokerage and soft dollar services to hedge funds. As a result, SMH made improper payments of \$325,000 in soft dollars to a hedge fund manager.

The firm's failures also included drafting and distributing hedge fund sales materials that did not adequately disclose material investment risks to potential hedge fund investors. In addition, SMH entered into an improper compensation arrangement with two SMH brokers who also managed hedge funds, allowing them to share in commissions earned from fund trading contrary to representations made in the offering documents and a separate agreement.

In addition to the fine, SMH was ordered to retain an Independent Consultant to conduct a comprehensive review of the adequacy of the firm's policies, systems, procedures and training with regard to its hedge fund operation.

FINRA imposed \$100,000 fines and 20-day suspensions on Michael S. Rosen and Jack D. Seibald, the two brokers who helped manage SMH's prime brokerage services business while at the same time serving as the managers of a hedge fund that executed trades at SMH. Rosen and Seibald improperly received compensation from a profit pool derived, in part, from commissions on trading by their fund. This was contrary to the fund's private placement memorandum (PPM) and a separate contractual agreement. FINRA also imposed a 10-day suspension and \$15,000 fine on Anthony M. Gallo, an unregistered employee who engaged in activities that required securities industry registration.

"As broker-dealers increasingly provide services to hedge funds, they need to carefully tailor their supervisory systems and procedures to ensure they guard against conflicts of interest that result in securities law violations," said Susan L. Merrill, FINRA Executive Vice President and Chief of Enforcement. "SMH's inadequate procedures resulted in the firm making soft dollar payments without a reasonable inquiry into red flags indicating the payments were improper." FINRA found that SMH commenced its hedge fund services business in July 2000 and eventually established relationships with more than 15 different hedge funds, making the hedge fund business an important part of the firm's overall operations. SMH provided a platform of services to hedge fund managers including office space (complete with desks, computers, telephones and internet access), marketing assistance and capital introduction, with the fund managers paying for such services through commissions earned on trades directed to SMH.

The firm also operated soft dollar accounts for hedge funds that opted not to join SMH's prime brokerage services platform. These accounts collected a portion of the commissions earned when SMH executed trades for each fund. Fund managers could then submit, or cause to be submitted from third party service providers, invoices for products and services. SMH then paid the providers from the balances accumulated in the soft dollar accounts.

FINRA found that, by failing to have policies and procedures to police its soft dollar payments, SMH sent two improper soft dollar payments totaling \$325,000 to a hedge fund manager. The manager had submitted an invoice to SMH requesting that SMH issue one check for \$75,000 to an individual for "consulting services" and a second check for just under \$250,000 to the manager for "research expense reimbursement." The invoice raised several red flags. It requested that SMH pay the hedge fund manager directly for expenses that had purportedly been provided by a third party; it did not describe what research had been provided to the manager or who had provided the research; and it failed to describe the "consulting services" the individual provided. The hedge fund manager did not provide SMH with any invoice or backup documentation from the individual consultant or from any research provider to support the invoice. The invoice was suspect on its face.

Despite the red flags, SMH took no steps to determine whether the manager was relying on the soft dollar safe harbor under Section 28(e) of the Securities Exchange Act and, if not, whether the manager had disclosed to its clients that it was operating outside the safe harbor. Had SMH taken such steps, it would have revealed the invoice should not have been paid.

FINRA also found that Rosen and Seibald were employed as SMH brokers while managing a hedge fund that operated on SMH's prime brokerage services platform. To eliminate the conflict that arose from their dual roles, the fund's PPM as well as an October 2001 agreement between SMH, Rosen, Seibald and an outside firm that marketed the brokers' hedge fund prohibited Rosen and Seibald from sharing, in whole or in part, in any commissions SMH earned from trading for the hedge fund. In April 2002, contrary to the PPM and the agreement, SMH, Rosen and Seibald negotiated a new arrangement that allowed the two brokers to receive bonuses from a "profit pool" derived in part from the hedge fund's trading commissions. Nevertheless, Rosen and Seibald continued to disseminate the fund's PPM that incorrectly stated the brokers would not share in whole or in part in the fund's trading commissions.

FINRA also found that, as part of SMH's marketing assistance for its hedge fund clients, the firm's employees prepared and disseminated hedge fund sales materials to potential investors that failed to adequately disclose the risks inherent in hedge fund investing. Furthermore, these sales materials were not approved by a registered principal or signed, dated, and maintained in SMH's files for three years, as required by FINRA rules.

FINRA further determined that SMH failed to retain and preserve certain e-mails and instant messages of firm employees between January 2003 and December 2004, as required by federal securities laws and FINRA Rules. SMH's failure to retain these communications hampered FINRA's ability to investigate the firm's activities.

In settling this matter, SMH, Rosen, Seibald and Gallo neither admitted nor denied the charges, but consented to the entry of FINRA's findings.

Rosen's suspension in any capacity was in effect from February 4, 2008, through February 23, 2008. Siebald's suspension in any capacity was in effect from February 25, 2008, through March 15, 2008. Gallo's suspension in any capacity was in effect from February 4, 2008, through February 13, 2008.

## **FINRA Fines Banc One for Unsuitable Variable Annuity Sales, Inadequate Supervision of Fixed-to-Variable Annuity Exchanges**

### **Firm to Pay \$225,000 Fine, Make Restitution and Other Allowances to Customers**

The Financial Industry Regulatory Authority (FINRA), as part of its ongoing efforts to curb abuses in the sale of variable annuities, has fined Banc One Securities Corporation (BOSC) of Chicago \$225,000 for making unsuitable sales of deferred variable annuities to 23 customers and for having inadequate systems and procedures governing annuity exchanges. Twenty-one of the 23 customers were over 70 years old.

In addition to the fine, FINRA is requiring the firm to allow each of the 23 customers to sell their variable annuities without penalty. Ordinarily, these variable annuities would have been subject to a six-year "surrender period" during which time the customers would have been required to pay surrender charges as high as 7 percent of the amount invested if they were sold in the first two years. The firm will also pay restitution of about \$6,500 to two customers who incurred surrender charges when exchanging annuities.

In 2006, BOSC merged with J.P. Morgan Securities, Inc.

"Variable annuities are complicated products with features such as surrender charges that can limit the customer's ability to access the invested funds," said Susan Merrill, FINRA Executive Vice President and Chief of Enforcement. "When firms are recommending annuities or annuity exchanges to elderly customers, they must act in the customers' best interests, taking into account all relevant factors—including the customers' ages and liquidity needs, surrender charges, product expenses and investment features. The exchanges at issue in this case appeared to have no real benefits to the customers, while subjecting them to new sales charges and locking up their money for a new, six-year surrender period."

FINRA found that in each of the 23 transactions between January 1, 2004, and June 30, 2005, BOSC representatives recommended that the customers exchange their fixed annuities then paying a minimum of 3 percent, for variable annuities. Following the exchange, the customers placed 100 percent of their assets into the fixed rate feature of the variable annuity, which paid a maximum of 3 percent—as recommended by BOSC representatives. All but one of the fixed annuities were beyond the surrender period—that is, the customers were not subject to any financial penalties if they withdrew any of their funds from the fixed annuity. Each of the newly purchased variable annuities was subject to a six-year surrender period requiring the customers to pay a penalty if they withdrew more than the sum of their earnings and 10 percent of their principal. FINRA found that each of these 23 recommendations was unsuitable, given the customer's age, investment objective, financial situation and income needs.

The settlement cites one example of an 80-year old customer who exchanged a fixed annuity earning 3 percent for a variable annuity, in which he invested the entire \$80,000 balance in the fixed income feature, which also paid 3 percent interest. This new variable annuity was subject to a six-year surrender period. Within the first year of owning the variable annuity, the customer withdrew \$9,000. Sixteen months after buying the variable annuity, the customer liquidated it and incurred a \$4,628 surrender fee.

FINRA further found that BOSC failed to adequately supervise these transactions and that the firm's supervisory system and procedures failed to require firm supervisors to obtain or consider certain critical information, such as the costs and benefits of features of the new and exchanged product, which are necessary for conducting the required suitability review of a variable annuity exchange.

In concluding this settlement, BOSC neither admitted nor denied the charges, but consented to the entry of FINRA's findings.